RESEARCH MEMORANDUM

To: **Members of the URLTA Drafting Committee**

From: **Co-Reporters: Sheldon Kurtz and Alice Noble-Allgire**[1]

Date: **September 21, 2012**

Re: **Assignment and subletting of residential leases**

Although URLTA deals with many of the issues that arise between residential tenants and their landlords, it is almost completely silent about assignment and subletting. This memorandum responds to the URLTA Study Committee's request for review of several assignment and subletting issues. Part I focuses upon the landlord's rights to prohibit or limit assignments and subleases. Part II examines the rights and responsibilities of the various parties after an assignment or sublease. The memo concludes with a recommendation that the Drafting Committee consider adding sublease and assignment provisions to the revised URLTA to clarify some of these issues.

I. LANDLORD'S RIGHT TO LIMIT TRANSFERS

Under traditional property law principles, a lease is a conveyance of an estate in land and, as such, the tenant has the right to transfer that estate or lesser estates carved out of it. It has become commonplace, however, for leases to contain a provision restricting the tenant's power to transfer. In some cases, the lease entirely prohibits assignments or subleases, but it is more common for the lease to state that the tenant may not assign or sublease without the landlord's consent.[2] The courts generally have upheld these restrictions as a means of protecting the landlord's interest in the property. Because they are a restraint on alienation, however, courts tend to give them a narrow construction; thus, for example, some courts have held that a lease provision prohibiting assignments is not effective to prevent subleases and vice versa.[3]

The following discussion addresses two recurring issues with respect to assignment and sublease restrictions. The first is whether the landlord must have a reasonable basis for withholding consent to an assignment or sublease. The second is the related question of what constitutes reasonable grounds for withholding consent.

A. Must Landlord Have Reasonable Grounds for Withholding Consent?

Many leases prohibit assignment and subleases without the landlord's consent and expressly state that the landlord may not withhold consent unreasonably. In other cases, however, the lease is "silent" as to whether the landlord's withholding of consent must be

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[1] This memorandum was prepared in large part by Brian Lee, a research assistant to Professor Noble-Allgire.
[2] WILLIAM B. STOEBUCK & DALE A. WHITMAN, THE LAW OF PROPERTY 385 (3d ed. 2000).
[3] *See, e.g.*, Kendall v. Ernest Pestana Inc., 40 Cal. 3d 488, 494-95 & n.7 (1985).

reasonable – or whether it may be arbitrarily withheld. State courts and legislatures have stepped in to clarify the question that these "silent consent" clauses left unanswered.

Five states have spoken to this issue through legislation. Two of the five simply provide that a landlord's refusal to consent to an assignment or sublease must be reasonable.[4] The three others have each taken their own unique approach:

- New York, for example, allows a landlord to unreasonably withhold consent to an assignment or sublease, but the landlord must release the tenant from the lease if the tenant so requests after an unreasonable refusal.[5]

- California gives a landlord wide berth to include provisions in the lease to restrict transfers, including the right to "absolutely prohibit" transfers as well as permitting transfers only with the landlord's consent.[6] If a consent clause is used, it must include an "express standard or condition for giving or withholding consent, including, but not limited to either of the following: (a) landlord's consent may not be unreasonably withheld[;] (b) landlord's consent may be withheld subject to express standards or conditions."[7] If the consent clause contains no standard, it is construed to imply that the landlord's consent may not be unreasonably withheld.[8]

- Hawaii permits a tenant to assign "at any time without the approval or consent of the lessor" provided that the landlord lessor has received "(1) either a true executed copy of such assignment or written notice thereof, (2) a reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration or Veterans Administration or the Federal National Mortgage Association or a foreclosure of mortgage or assignment in lieu of foreclosure, and (3) the written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in such assignment."[9] The landlord's consent is required, however, for the tenant to be released from liability under the lease, and the statute provides that consent may not be unreasonable withheld.[10]

A handful of other states prohibit transfers without the landlord's consent, but are silent as to whether the landlord's refusal to consent must be reasonable.[11]

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[4] ALASKA STAT. § 34.03.060; DEL. CODE tit. 25, § 5508.
[5] N.Y. REAL PROP. LAW § 226-b.
[6] CAL. CIV. CODE §§ 1995.230 –1995.250. Although the statute recognizes the landlord's right to prohibit transfers entirely, a landlord that exercises this option would be prohibited from enforcing the lease against the tenant after abandonment. *Id.* § 1951.4.
[7] *Id.* § 1995.250,
[8] *Id.* § 1995.260.
[9] HAW. REV. STAT. § 516-63.
[10] *Id.*
[11] *See, e.g.*, KAN. STAT. § 58-2511; KY. REV. STAT. § 383.180; MO. STAT. § 441.030; MONT. CODE § 70-24-305; OKLA. STAT. tit 41, § 10; PA. STAT. tit 68, § 250.203 (leases for terms of more than three years); S.C. CODE § 27-35-60; TEX. PROP. CODE § 91.005.

The case law regarding "silent consent" clauses has reached mixed results. Historically, courts have recognized the landlord's right to refuse consent for any reason – or without giving a reason – and most of the case law dealing with "silent consent" clauses in residential leases still follows that traditional view.[12] Professor Rabin observes that the landlord's common law right to reject arbitrarily a proposed assignee or sublessee is related to the landlord's power to act arbitrarily in selecting or rejecting a new tenant: "The proposed assignee or sublessee may be objectionable to the landlord for reasons that seem arbitrary but may be important to the landlord." [13] Courts following the traditional view, however, generally have not relied upon this reasoning in recent decisions. Instead, they have taken a freedom of contract approach: "A court does not insert terms into a contract when the parties elected to omit such terms, . . . and we will not here insert a requirement that the lessor not unreasonably withhold his consent."[14]

The modern trend has been to require the landlord to have reasonable grounds for withholding consent. Three courts have adopted this approach in cases involving residential leases;[15] most of the other cases that exemplify the modern trend have dealt with commercial leases.[16] It is notable, however, that the latter courts have made no distinction between commercial and residential leases when adopting or stating the rule that a landlord may not unreasonably withhold consent. Moreover, the underlying rationale of these decisions seems to be equally applicable to both commercial and residential leases. As a Colorado court explained: "[A] lease is a contract and, as such, should be governed by the general contract principles of good faith and commercial reasonableness."[17] The court, therefore, cited with approval the Restatement (Second) of Property view that "the landlord's consent . . . cannot be withheld unreasonably, unless a freely negotiated provision in the lease gives the landlord an absolute right to withhold consent."[18] The other courts that have engrafted a reasonableness requirement upon silent consent clauses in residential leases have provided a similar analysis.[19]

To the extent that Section 1.302 of the URLTA expressly imposes a good faith requirement upon the parties, it might be viewed as support for the modern rule. Because the current version of the URLTA does not address sublease and assignment clauses, however, the good faith provision cannot be read that broadly, as Professor Rabin explains:

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[12] Vaswani v. Wohletz, 396 S.E.2d 593, 594 (Ga. App. 1990); Drake v. Diggins, 39 N.E.2d 1023, 1023 (Ill. App. Ct. 1942); Owens v. Oglesby, 123 So. 2d 521, 523-24 (La. Ct. App. 1960); Slavin v. Rent Control Bd. of Brookline, 548 N.E.2d 1226, 1229 (Mass. 1990); Segre v. Ring, 170 A.2d 265, 266 (N.H. 1961); Muller v. Beck, 110 A. 831, 832 (N.J. 1920); Isbey v. Crews, 284 S.E.2d 534, 536-37 (N.C. App. 1981); Dobyns v. S.C. Dept. of Parks, Recreation & Tourism, 480 S.E.2d 81, 84 (S.C. 1997); Dieter v. Scott, 9 A.2d 95, 98 (Vt. 1939).

[13] Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences,* 69 CORNELL L. REV. 517, 533 (1984).

[14] *Isbey*, 284 S.E.2d at 537.

[15] Siewert v. Casey, 80 So. 3d 1114, 1116 (Fla. Dist. Ct. App. 2012); Pac. First Bank v. New Morgan Park Corp., 876 P.2d 761, 768 (Or. 1994); Basnett v. Vista Village Mobile Home Park, 699 P.2d 1343, 1347 (Colo. Ct. App. 1984), *rev'd on other grounds*, 731 P.2d 700, 704 (Colo. 1987).

[16] *See, e.g.*, *Kendall*, 709 P.2d at 837; Julian v. Christopher, 575 A.2d 735 (Md. 1990); Fernandez v. Vazquez, 397 So. 2d 1171 (Fla. Dist. Ct. App. 1981); Homa-Goff Interiors, Inc. v. Cowden, 350 So. 2d 1035 (Ala. 1977).

[17] *Basnett*, 699 P.2d at 1347.

[18] *Pac. First Bank*, 876 P.2d at 768 (citing Restatement (Second) of Property § 15.2(2) (1977 & 1993 Supp.)).

[19] *Siewert*, 80 So. 3d at 1116; *Pac. First Bank*, 876 P.2d at 768.

> [I]t is possible that section 1.302, which imposes a duty of good faith for the exercise of rights "under this Act" may be construed to impose a good faith requirement on the landlord's exercise of a right to withhold consent to a proposed assignment or sublease of a residential lease. One can argue, however, that the landlord's common law right to withhold consent to an assignment when the lease purports to give that right is not the exercise of a right "under this Act" and, therefore, the good faith requirement does not apply. In contrast, the Model Residential Landlord-Tenant Code, which served as a source for URLTA, imposed an express good faith requirement on the landlord in this context. URLTA's failure to adopt the Model Code's assignment provision suggests that the common law freedom to act arbitrarily has not been affected by URLTA.[20]

In light of the divergent views on the issue, the Drafting Committee should consider adding a provision to the revised URLTA to follow the modern trend of requiring landlords to have a reasonable basis for withholding consent to an assignment or sublease. The palatability of such a rule, however, may depend upon what justifications for refusing consent are considered reasonable, an issue taken up in the following section.

B. Reasonable and Unreasonable Grounds for Denying Consent

Because many leases include a reasonableness element in their consent clauses (and a number of jurisdictions require reasonableness by statute or case law), the Drafting Committee should consider whether to provide guidance on this issue in the revised URLTA. Out of the five state statutes dealing with this issue, only Alaska's specifically sets out the specific grounds for which a landlord can reasonably refuse consent.[21] That statute provides, in pertinent part:

> Within 14 days after the written offer has been delivered to the landlord, the landlord may refuse consent to a sublease or assignment by a written rejection signed and delivered by the landlord to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:
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> (1) insufficient credit standing or financial responsibility;
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> (2) number of persons in the household;
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> (3) number of persons under 18 years of age in the household;
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> (4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;
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> (5) proposed maintenance of pets;
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> (6) proposed commercial activity; or
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> (7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.[22]

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[20] Rabin, *supra* note 13, at 533.

[21] California's statute identifies the reasonableness issue as "a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer." CAL. CIV. CODE § 1995.260. The statutes of other states do not provide specific guidance on what constitutes reasonable grounds for refusal.

[22] ALASKA STAT. § 34.03.060(d).

These grounds are consistent with the reasonableness tests adopted by the courts. Here again, the case law primarily deals with commercial leases, but the analysis would appear to be equally relevant to residential leases. In the leading case on the issue, *Kendall v. Ernest Pestana, Inc.*,[23] the California Supreme Court held that the factors which a landlord may take into account in reasonably withholding his consent to an assignment or sublease include the financial responsibility of the proposed assignee/sublessee, the legality of the proposed use, and the need for alteration of the premises.[24] These "reasonableness" factors were thereafter adopted by a number of other states.[25] Other grounds that courts have found to be reasonable in denying consent to an assignment or sublease include: insufficient information about the new tenant,[26] the proposed tenant's association with undesirables,[27] and the original tenant's failure to comply with lease requirements or indicate a willingness to remain obligated under the lease.[28] Some courts have held that a refusal of consent is reasonable only if the proposed tenant is unacceptable based on factors applicable to acceptance of the original tenant.[29]

Kendall also provided guidance as to what grounds would be *unreasonable* for refusing consent to an assignment or sublease. These include personal taste, convenience, sensibility, or charging rent higher than that contracted for in the master lease.[30] Similarly, a New Jersey court found it unreasonable for a landlord to refuse consent because a landlord would lose potential tenants in another building by doing so.[31] Consistent with this idea, courts have found that a landlord acts unreasonably in denying a sublease when the landlord thereafter rents property to the proposed tenant.[32]

II. RELATIONS BETWEEN PARTIES AFTER ASSIGNMENT OR SUBLEASE

A. Traditional View of Privity in Residential Leases

Under traditional law, the legal relationships between a landlord and a tenant, assignee, or sublessee are defined by two forms of privity that exist in the landlord-tenant context: privity of contract and privity of estate.[33] Privity of contract describes the contractual relationship arising between two parties who enter into an agreement. Thus, privity of contract exists between a landlord and a tenant with respect to the promises or covenants in a lease between those parties.

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[23] 709 P.2d 837 (Cal. 1985).
[24] *Id.* at 845.
[25] *See, e.g.*, Morgan Prods., Inc. v. Park Plaza of Oshkosh, Inc., 598 N.W.2d 626, 630 (Wis. Ct. App. 1999); Newman v. Hinky Dinky Omaha-Lincoln, Inc., 427 N.W.2d 50, 54 (Neb. 1988); Van Sloun v. Agans Bros., Inc., 778 N.W.2d 174, 181 (Iowa 2010). The factors listed in *Ernest Pestana* had been stated even before that case was decided. *See Fernandez*, 397 So. 2d at 1174; Brigham Young Univ. v. Seman, 672 P.2d 15, 18 (Mont. 1983).
[26] Fairchild Realty Co. v. Spiegel, Inc., 98 S.E.2d 871, 877 (N.C. 1957).
[27] Mowatt v. 1540 Lake Shore Drive Corp., 385 F.2d 135, 137-38 (7th Cir. 1967) (applying Illinois law).
[28] *Van Sloun*, 778 N.W.2d at 180.
[29] Boss Barbara, Inc. v. Newbill, 638 P.2d 1084, 1086 (N.M. 1982).
[30] *Kendall*, 709 P.2d at 845.
[31] Krieger v. Helmsley-Spear, Inc., 302 A.2d 129 (N.J. 1973).
[32] Cowan v. Chalamidas, 644 P.2d 528, 531 (N.M. 1982); Gamble v. New Orleans Hous. Mart, Inc., 154 So. 2d 625, 627 (La. Ct. App. 1963).
[33] Rhonda S. Berliner, Note, *Bankruptcy and Subleases: The Depravity of Privity*, 14 CARDOZO L. REV. 193, 195 (1992).

It would also exist if an assignee assumes the master lease, thereby agreeing to be bound by its terms.

Privity of estate describes the relationship flowing from the ownership of property interests in land. If privity of estate exists -- and several other elements also are met -- real covenants in a lease may "run with the land" to bind successors even if the successors are not contractually bound by the covenants. The additional elements required for the covenant to run are (1) that the parties intended for the covenant to be binding on successors; and (2) the covenant "touches and concerns" land. Covenants that are personal to a particular party (i.e., they do not touch and concern the land) are not enforceable against successors.

1. Effect of an Assignment

An assignment occurs when a tenant transfers to a successor the right of possession to the premises for the *entire time* remaining on the term of the lease. Because the original tenant no longer has possessory rights, privity of estate ceases to exist between the tenant and the landlord and is created instead between the landlord and assignee. The assignee is then bound by all of the real covenants that run with the land as long as the assignee holds the estate. In addition, if the assignee were to assume the lease between the landlord and tenant, the assignee also would become bound by privity of contract.[34]

Privity of estate ceases between the landlord and the original tenant after an assignment but privity of contract continues. As a result, the tenant ordinarily remains liable for his contractual obligations under the lease.[35] The tenant might be released from liability if the lessor were to grant a novation of the lease or if the lease contained a provision expressly releasing the tenant upon assignment. It is extremely rare, however, for a residential tenant to be in a sufficiently strong bargaining position to get the landlord to agree to either of these alternatives.[36] As a result, the landlord typically may elect to sue either the original tenant or the assignee for breach of the lease. As a practical matter, however, the original tenant stands largely in the position of a surety because, as between the original tenant and the assignee, the original tenant's liability is secondary.[37]

The same principles apply if the assignee were to subsequently assign his interests to a successor. Privity of estate would cease between the landlord and the first assignee and would instead exist between the landlord and the second assignee. As a result, the first assignee would be relieved of liability unless he had established privity of contract with the landlord by assuming the lease. The second assignee would become liable under privity of estate, but would not become liable under privity of contract unless the second assignee assumed the lease.

One further wrinkle in the relations between the landlord and an assignee is whether particular covenants can meet the other requirements to run with the land, most notably the

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[34] *Id.*
[35] *Id.*
[36] Stuart Bridge, *Former Tenants, Future Liabilities and the Privity of Contract Principle: The Landlord and Tenant (Covenants) Act 1995*, 55 CAMBRIDGE L.J. 313, 318 (1996).
[37] 1 AMER. L. PROP. § 3.61 (1952).

"touch and concern" requirement. As a practical matter, most covenants in a residential lease are likely to satisfy the requirement, but the amorphous quality of the touch and concern requirement can create the potential for litigation over whether a particular covenant meets the test.

2. Effect of a Sublease

A sublease occurs when a tenant transfers to a successor the right of possession to the premises for a time period that is *less than* the full time remaining on the term. This distinction between a sublease and assignment has important consequences for privity of estate. Because the original tenant (the sublessor) retains an interest in the property, the original tenant-sublessor remains in privity of estate with the landlord. The sublessee does not have privity of estate with the landlord under the master lease; instead, the sublessee's rights are carved out of the original tenant's estate and, therefore, the sublessee has both privity of estate and privity of contract only with the sublessor.[38]

Lacking either form of privity with one another, neither a landlord nor a sublessee has a direct claim against the other for damages for a breach of the lease or sublease agreements as a matter of law.[39] Of course, the parties may create privity of contract if the sublessee were to assume the master lease or if the sublease were to incorporate the terms of the master lease. The landlord could then use a third-party beneficiary theory to enforce the terms of the sublease.[40] Moreover, to the extent that the landlord has the right to terminate the master lease for nonpayment of rent or breach of other conditions in the lease, that termination would effectively extinguish the sublease as well, as a New York court explained:

> The basic rule is that a sublease is dependent on and limited by the terms and conditions of the main lease from which it is carved. A subtenancy may thus be terminated by the expiration of the term of the lessee or a reentry by the landlord for a condition broken.[41]

Even without privity, however, it may be possible for the landlord to enforce some of the covenants as a matter of equity. Under equitable servitudes law, privity of estate is not required, but the successor must have notice of the covenant and the covenant must otherwise meet the requirements for a covenant to run with the land.[42] Thus, courts may provide injunctive relief or

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[38] Berliner, *supra* note 33, at 196.

[39] *Id.* at 196-97.

[40] *See, e.g.*, **Error! Main Document Only.**Vallely Invs., L.P. v. BancAmerica Commercial Corp., 106 Cal. Rptr. 2d 689 (Cal. Ct. App. 2001); C.R. Anthony Co. v. Wal-Mart Props., Inc., 54 F.3d 514, 522 (8th Cir. 1995). The tenant, however, would not have a reciprocal right to enforce the provisions against the landlord. *See* **Error! Main Document Only.**Summit Foods, Inc. v. Greyhound Food Mgmt., Inc., 752 F. Supp. 363, 365 (D. Colo. 1990) (holding that paragraph in sublease required the sublessee to comply with the terms of the master lease, but the landlord had no reciprocal duty to the sublessee to comply with the terms of the master lease).

[41] Precision Dynamics Corp. v. Retailers Reps., Inc., 465 N.Y.S.2d 684, 685 (Civ. Ct. 1983); *see also* Dunn v. Barton, 16 Fla. 765, 772-73 (1878) (quoting Wheeler v. Earle, 5 Cushing 35); Ft. Worth Driving Club v. Ft. Worth Fair Ass'n, 103 Tex. 24, 26, 122 S.W. 254 (1909) ("**Error! Main Document Only.**stipulations like that in question, forbidding the use of the premises for a specified purpose, run with the land, and are in the nature of conditions, and the forbidden use of them by a sublessee is as much a violation of such a provision, and furnishes as good ground for forfeiture and re-entry as if it were the act of the original lessee").

[42] 1 AMER. L. PROP. § 3.62 (1952); STOEBUCK & WHITMAN, *supra* note 2, at 383.

specific performance of a covenant in the master lease.[43] Because equity does not permit recovery of damages, however, there is a troubling question of whether an action for the payment of rent would be a claim for damages or a request for specific enforcement of the covenant to pay rent.[44]

Sublessees have had even greater difficult enforcing covenants in the master lease against the landlord.[45] Thus, courts have refused to permit sublessees to exercise the sublessor's option to renew the lease[46] or sublessor's purchase option.[47] They have also refused to enforce a landlord's covenants to repair,[48] to maintain an unobstructed entrance,[49] and to not lease other space in a shopping center for a competing purpose.[50]

B. Modern Responses to the Effect of Privity on Assignments

Although most American jurisdictions continue to adhere to the traditional views regarding the legal effects of subleases and assignments, a trend is emerging in a few states and other countries to enact rules that better comport with the expectations of today's tenants and landlords. These modifications include releasing a tenant from liability after an assignment (even in the absence of the landlord's willingness to grant a novation) and clarifying the enforceability of covenants as between the landlord and an assignee or sublessee.

1. Release of Assignor Following an Assignment

One American state and at least three common law countries have enacted laws to release a residential tenant from liability to the landlord after an assignment. Under Hawaii's Landlord and Tenant Act, "[a] consent to the assignment shall be deemed a consent to the release of the assignor from liability under the lease."[51] England, New Zealand and Manitoba have similar laws releasing a residential tenant from liability

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[43] **Error! Main Document Only.**Hartford Deposit Co. v. Rosenthal, 192 Ill. App. 211, 214-15 (Ill. App. Ct. 1915) (injunction against sublessee's use of premises for a purpose prohibited by the master lease); Ft. Worth Driving Club v. Ft. Worth Fair Ass'n, 103 Tex. 24, 26, 122 S.W. 254 (1909) (same); *Dunn*, 16 Fla. at 772-73) (same).

[44] STOEBUCK & WHITMAN, supra note 2, at 383.The authors make a persuasive argument that promises to pay money should be enforced as an equitable servitude, but observe that earlier commentary suggests that the landlord may not sue a sublessee for rent as an equitable remedy. *Id*. (quoting 1 AMER. L. PROP. § 3.62 (1952)).

[45] Employees Consumer Org., Inc. v. Gorman's, Inc., 395 S.W.2d 162, 166 (Mo. 1965).

[46] Coffman v. Huber, 232 N.E.2d 676, 677 (Ohio Mun. 1965).

[47] *See, e.g.*, Novosad v. Clary, 431 S.W.2d 422 (Tex. Civ. App. 1968).

[48] *See, e.g.*, **Error! Main Document Only.**Hollander v. W.&E. Realty Co., 172 N.Y.S. 455 (App. Term 1918).

[49] **Error! Main Document Only.**Handleman v. Pickerill, 257 P. 890, 892 (Cal. Ct. App. 1927).

[50] **Error! Main Document Only.**State ex rel. Buttrey Foods, Inc. v. Dist. Court, 420 P.2d 845, 847 (Mont. 1966).

[51] HAW. REV. STAT. § 516-63. *But see* WIS. STAT. § 704.09(2) ("In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of any contractual obligations under the lease.").

following a valid assignment.[52] England's law goes even further and is applicable to commercial tenants.

England's reform is worth considering in greater detail because it came as part of a comprehensive Landlord and Tenant (Covenants) Act of 1995. To effect the release of a tenant after an assignment, the Act took the bold step of abolishing privity of contract.[53] However, the Act also includes concessions to landlords, such as greater power to refuse consent to assignment, as well the ability to enter into guarantee agreements with tenants as a condition of giving such consent.[54] The latter provisions could limit the impact of abolishing privity of contract because, as one commentator observed, "it is almost certain that the *quid pro quo* for [a consent to an assignment] will be a requirement to guarantee the liability of the immediate assignee."[55] Nonetheless, the Act has other provisions designed to benefit tenants. For instance, a tenant may apply for an "overriding lease," under which the tenant remains liable to the landlord just as he was under the master lease, but is granted the right to sue a defaulting assignee and reenter the premises, thereby terminating the assignment.[56]

The approach taken by Hawaii and the three common law countries is perhaps more consistent with the expectations of today's residential tenants than the traditional view. As one English case pointed out: "A person of modest means is understandably shocked when out of the blue he receives a rent demand from the landlord of the property he once leased."[57] Landlords, of course, have legitimate concerns about assignments, given that the tenant, and not the landlord, generally chooses the assignee. But the landlord's risks can be minimized if the landlord retains the ability to reasonably refuse consent to an assignment. As discussed above, the financial instability of a proposed assignee is almost universally recognized as a reasonable ground on which to refuse such consent. Thus, if a landlord's consent is required for the assignment and the landlord has the right to reasonably refuse consent, the landlord is in virtually the same position as the landlord would be in when selecting any new tenant.

2. Relations Between the Landlord and Assignee

A larger number of states (but still a distinct minority) have enacted statutes to modify or clarify the relationship between the landlord and an assignee. There has been considerable deviation in how the statutes address the issue, however, with some focusing only on the assignee's remedies against the landlord, others focusing on the landlord's remedies against the assignee, and still others recognizing reciprocal remedies between the landlord and assignee.

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[52] Bridge, *supra* note 36, at 327 n.86, 330-31 (noting, however, that in New Zealand and Manitoba,the rights apply only to residential tenants; a commercial tenant is *not* released from liability).
[53] *Id*. at 330-31. A landlord is not automatically released from liability under the lease due to an assignment of his interest but must instead request such a release from the tenant. *Id*. at 341.
[54] *Id.* at 329-30. There are also several important limitations in the act. The tenant will not be released from liability in the case of an "excluded assignment," which occurs where the assignment was itself a breach of the lease or the assignment was by operation of law. *Id.* at 338. A release also will not affect the liability for a breach of the lease that occurred before the assignment by either the landlord or the tenant. *Id.*
[55] *Id.* at 337.
[56] *Id.* at 333. If two persons are entitled to request an overriding lease, priority goes to the person who made the first request. *Id.* at 334.
[57] *Id*. at 327 (quoting Hindcastle, Ltd. v. Barbara Attenborough Assocs., Ltd., 2 W.L.R. 262, 268 (1996)).

Seven states (Hawaii, Indiana, Kansas, Montana, Oklahoma, South Dakota, and Wisconsin) fall into the last category,[58] as does England's Landlord and Tenants (Covenants) Act.[59] Hawaii's statute, for example, states that "the assignee shall have the same rights and obligations under the lease as the original lessee."[60] Wisconsin's statute is similar, but recognizes the traditional exceptional for personal covenants: "All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease."[61] The Wisconsin statute also makes it clear that a successor is liable in damages "only for a breach which occurs during the period when the successor holds his or her interest unless the successor has by contract assumed greater liability . . . ."[62] One additional point that may be important for the Drafting Committee to consider is the exception in Montana's act for assignments made as a security for a loan when the assignee does not take possession of the property.[63]

Five states (Arizona, Idaho, Maryland, North Dakota, and West Virginia) have statutes that focus the remedies the landlord has against an assignee. Idaho and North Dakota have virtually identical statutes, which very broadly provide that the landlord has the same remedies against the assignee as the landlord would have against the tenant.[64] Arizona, Maryland and West Virginia's statutes are more limited in scope. Arizona's statute provides that when the premises are sublet or the lease is assigned, "the landlord shall have a like lien against the sublessee or assignee as the landlord has against the tenant and may enforce it in the same manner."[65] Maryland's statute states that the assignee "is liable to distress for any goods on the leased premises as though originally named in the lease as tenant . . . ."[66] West Virginia's statute focuses exclusively on liability for rent: "Rent may be recovered from the lessee, or other person owing it, or the heir, personal representative, devisee or assignee, who has succeeded to the

[58] HAW. REV. STAT. § 516-63; IND. CODE § 32-31-1-13 ("An alienee of a lessor or lessee of land has the same legal remedies in relation to the land as the lessor or lessee."); KAN. STAT. § 58-2516 ("Alienees of lessors and lessees of land shall have the same legal remedies in relation to such land as their principal."); MONT. CODE §§ 70-26-105, 70-26-106; OKLA. STAT. tit. 41, § 15 ("Alienees of lessors and lessees of land shall have the same legal remedies in relation to such lands as their principals."); S.D. CODIFIED LAWS §§ 43-32-20, 43-32-21; WIS. STAT. §§ 704.09(3).
[59] Bridge, *supra* note 36, at 336 ("Only if a covenant is expressed to be personal to any person will it not be enforceable by or against any other person.")
[60] HAW. REV. STAT. § 516-63.
[61] WIS. STAT. § 704.09(3).
[62] *Id*.
[63] MONT. CODE § 70-26-105.
[64] IDAHO STAT. § 55-302 ("Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises."); N.D. CENT. CODE § 47-16-30 ("Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of an agreement in the lease or for recovery of the possession, the lessor also has against the assignees of the lessee for any claim for relief accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises.").
[65] ARIZ. REV. STAT. §§ 33-361(E), 33-362(D).
[66] MD. CODE REAL PROP. § 8-329.

lessee's estate in the premises. But no assignee shall be liable for rent which became due before his or her interest began."[67]

Finally, New York's statute focuses on the assignee's remedies against the landlord: "A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased."[68] It also specifies the rights that a successor to the landlord has to enforce the lease, but does not specifically mention what rights the landlord or the landlord's successor would have against tenants' assignees.[69]

3. Relations Between Landlord and Sublessee

Under traditional law, as discussed above, a landlord is generally prohibited from taking action directly against a sublessee and vice versa. Although there are a number of exceptions to this rule, there are many cases in which the landlord can get relief only by bringing an action against the original tenant (the sublessor), who could then bring a claim against the sublessee under the sublease. Similarly, a sublessee would have to bring an action against the sublessor, who could then proceed against the landlord under the master lease. Arguably, it would be more economically efficient to permit the landlord to bring an action directly against the sublessee, thereby resolving the dispute in one action, rather than two. Similarly, it would be efficient for a sublessee to proceed directly against a landlord.

A handful of states have already taken steps in that direction. Four of these statutes focus only on the sublessee's remedies against the landlord. Arizona's statute, discussed above in relation to the landlord's rights against an assignee, provides that the landlord "shall have a like lien against the sublessor or assignee" as the landlord would have had against the original tenant.[70] Indiana, Kansas, and Oklahoma provide more broadly that the sublessee has the same remedy under the master lease against the landlord that the sublessee would have had against the tenant/sublessor.[71] Pennsylvania, on the other hand, focuses on the landlord's rights against the sublessee. Its statute states: "Any person who is a sublessee shall be subject to the provisions of the lease between the lessor and the lessee."[72]

4. Relations Between Tenant and Sublessee

One final issue the Study Committee has encouraged the Drafting Committee to consider is the tenant's rights and responsibilities in relation to the sublessee. Under the current version of the URLTA, the term "landlord" includes a sublessor. Thus, a sublessor would have all of the same rights and obligations that all landlords have under the URLTA. The Study Committee

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[67] W. VA. CODE § 37-6-11.
[68] N.Y. REAL PROP. LAW § 223.
[69] *Id.*
[70] ARIZ. REV. STAT. §§ 33-361(E), 33-362(D).
[71] IND. CODE § 32-31-1-12; KAN. STAT. § 58-2515; OKLA. STAT. tit. 41, § 14.
72 PA. STAT. tit. 68, § 250.105.

questioned, however, whether it makes sense to hold a tenant/sublessor responsible for all of a landlord's obligations – particularly the landlord's duties under the warranty of habitability.

Given the landlord's ultimate control over most, if not all, of the conditions of the property covered under the warranty of habitability, it does seem sensible for those duties to lie with the original landlord and not in the sublessor. The Drafting Committee may want to consider whether, as a policy matter, there are other provisions in the URLTA that should not apply to sublessors, such as the proposed revisions regarding required disclosures and the safekeeping of security deposits. Most of the other provisions in the URLTA would seem just as relevant to sublessors and sublessees as they are between the original landlord and tenant. Accordingly, rather than excepting sublessors from the definition of "landlord," as the Study Committee suggested, it may make more sense to carve out limited exceptions to particular provisions.

CONCLUSION AND RECOMMENDATIONS

The current version of the URLTA is largely silent on subleases and assignments, leaving some recurrent questions about the extent of a landlord's rights to withhold consents to such transfers as well as the consequences that an assignment or sublease has upon the relationships between the parties. Accordingly, the Drafting Committee should consider whether to address these issues in the revised URLTA. More specifically, the Committee should consider:

1. Landlord Consents to Transfers. The Committee should consider whether to follow the modern trend of requiring landlords to have a reasonable basis for refusing consent to a sublease or assignment.

2. Establishing a Safe Harbor for Consents. The Committee should consider whether to include a provision to clarify what constitutes a reasonable basis for refusing consent to a sublease or assignment. The Alaska statute set forth in Part I provides a solid framework for such a provision.

3. Relations Between the Parties After a Transfer. The Committee should consider whether to clarify and perhaps modernize the traditional rules governing the parties' rights and responsibilities after a sublease or assignment. More specifically, the Committee should consider:

    a. Whether a tenant should be released from liability after an assignment;

    b. Whether to clarify the rights of the landlord and the assignee to enforce the covenants under the master lease against one another; and

    c. Whether a landlord and sublessee should be allowed to proceed directly against one another for breach of covenants under the master lease.

Proposed language for some of these provisions is attached to this memo as Apppendix A. Other statutory provisions enacted by the states appear in Appendix B.

APPENDIX A – Proposed Language on Assignment and Subleasing

Tenant's Right to Sublease or Assign with Landlord's Consent:

(a) Except as provided otherwise in a lease, a tenant shall neither assign nor sublease a lease without the landlord's written consent.

(b) A landlord's refusal to consent an assignment or sublease must be reasonable. A landlord's refusal to an assignment or sublease by the tenant is reasonable if based on any of the following grounds:

(i) The insufficient credit standing or financial responsibility of the proposed assignee or sublessee;

(ii) The need for alteration to the premises for the assignee or sublessee's use;

(iii) The number of persons to reside in the dwelling after the assignment or sublease;

(iv) The unwillingness of the proposed assignee or sublessee to assume the terms found in the lease agreement between the landlord and the proposed assignor or sublessor;

(v) Past abuses of other residential premises by the proposed assignee or sublessee, as stated, in a signed writing, by a prior landlord of the proposed assignee or sublessee; or

(vi) Proposed commercial activity on the premises by the assignee of sublessee.

(c) A landlord's refusal to consent to an assignment or sublease by the tenant is unreasonable if based solely on:

(i) Personal taste;

(ii) Convenience;

(iii) Reasons inconsistent with anti-discrimination principles under federal or state law; or

(iv) The landlord's ability to charge a higher rent.

(d) A landlord's consent to an assignment or sublease is not a consent or waiver of the landlord's rights with respect to any subsequent transfers by the assignee or sublessee.

Rights and Obligations Following Assignment or Sublease

(a) Except as provided in the lease or other record, a landlord's consent to an assignment releases the assignor from liability under the lease after the assignment.

(b) A landlord's consent to a sublease does not release the tenant of any contractual obligations under the lease after the sublease.

(c) Except as provided in the lease or other record, all covenants and other provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease, including assignees or sublessees, during the period when the successor holds his or her interest.

(d) The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

APPENDIX B – State Statutory Language on Assignment and Subleasing

- ***Alaska*.** (a) Unless otherwise agreed in writing, the tenant may not sublet the premises or assign the rental agreement to another without the landlord's consent
  (b) The tenant's right to sublease the premises or assign the rental agreement to another shall be conditioned on obtaining the landlord's consent, which may be withheld only upon the grounds specified in (d) of this section; no further restrictions on sublease or assignment are enforceable.
  (c) When the rental agreement requires the landlord's consent for sublease or assignment, the tenant may secure one or more persons who are willing to occupy the premises. Each prospective occupant shall make a written offer signed and delivered by the prospective occupant to the landlord, containing the following information on the prospective occupant:
    (1) name, age, and present address;
    (2) marital status;
    (3) occupation, place of employment, and name and address of employer;
    (4) number of all other persons who would normally reside with the prospective occupant;
    (5) two credit references, or responsible persons who will confirm the financial responsibility of the prospective occupant; and
    (6) names and addresses of all landlords of the prospective occupant during the prior three years.
  (d) Within 14 days after the written offer has been delivered to the landlord, the landlord may refuse consent to a sublease or assignment by a written rejection signed and delivered by the landlord to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:
    (1) insufficient credit standing or financial responsibility;
    (2) number of persons in the household;
    (3) number of persons under 18 years of age in the household;
    (4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;
    (5) proposed maintenance of pets;
    (6) proposed commercial activity; or
    (7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.
  (e) In the event the written rejection fails to contain one or more grounds permitted by (d) of this section for rejecting the prospective occupant, the tenant may consider the landlord's consent given, or at the tenant's option may terminate the rental agreement by a written notice given without unnecessary delay to the landlord at least 30 days before the termination date specified in the notice.
  (f) If the landlord does not deliver a written rejection signed by the landlord to the tenant within 14 days after a written offer has been delivered to the landlord by the tenant, the landlord's consent to the sublease or assignment shall be conclusively presumed. ALASKA STAT. § 34.03.060.

- ***Arizona.*** When premises are sublet or the lease is assigned, the landlord shall have a like lien against the sublessee or assignee as the landlord has against the tenant and may enforce it in the same manner. ARIZ. REV. STAT. § 33-361(E).

  When premises are sublet, or when the lease is assigned, the landlord shall have the same lien against the sublessee or assignee as he has against the tenant and may enforce the lien in like manner. ARIZ. REV. STAT. § 33-362(D).

- ***California.*** Even though a lessee of real property has breached the lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all the lessor's rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, if any of the following conditions is satisfied:
  (1) The lease permits the lessee, or does not prohibit or otherwise restrict the right of the lessee, to sublet the property, assign the lessee's interest in the lease, or both.
  (2) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, subject to express standards or conditions, provided the standards and conditions are reasonable at the time the lease is executed and the lessor does not require compliance with any standard or condition that has become unreasonable at the time the lessee seeks to sublet or assign. For purposes of this paragraph, an express standard or condition is presumed to be reasonable; this presumption is a presumption affecting the burden of proof.
  (3) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, with the consent of the lessor, and the lease provides that the consent shall not be unreasonably withheld or the lease includes a standard implied by law that consent shall not be unreasonably withheld. CAL. CIV. CODE § 1951.4(b).

  (a) Subject to the limitations in this chapter, a lease may include a restriction on transfer of the tenant's interest in the lease.
  (b) Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease. CAL. CIV. CODE § 1995.210.

  An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability. CAL CIV. CODE § 1995.220.

  A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer. CAL. CIV. CODE § 1995.230.

  A restriction on transfer of a tenant's interest in a lease may provide that the transfer is subject to any express standard or condition, including, but not limited to, a provision that the landlord is entitled to some or all of any consideration the tenant receives from a transferee in excess of the rent under the lease. CAL. CIV. CODE § 1995.240.

  A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, either of the following:

(a) The landlord's consent may not be unreasonably withheld.
(b) The landlord's consent may be withheld subject to express standards or conditions. CAL. CIV. CODE § 1995.250.

If a restriction on transfer of the tenant's interest in a lease requires the landlord's consent for transfer but provides no standard for giving or withholding consent, the restriction on transfer shall be construed to include an implied standard that the landlord's consent may not be unreasonably withheld. Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer. CAL. CIV. CODE § 1995.260.

- ***Delaware*.** No person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, sexual orientation, national origin, disability, age or occupation or because the tenant or person has a child or children in the family. DEL. CODE tit. 25, § 5116(a).

  (a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another.
  (b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.
  (c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld, the burden of showing reasonableness shall be on the landlord. DEL. CODE tit. 25, § 5508.

- ***District of Columbia***. The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable. D.C. CODE § 42-3404.06.

- ***Hawaii*.** Except as otherwise provided in section 516-35 and restrictions placed in leases by state or county agencies, a lessee may assign the lessee's lease at any time without the approval or consent of the lessor, and the assignee shall have the same rights and obligations under the lease as the original lessee; provided that no such assignment shall be effective to transfer any interest in the lease unless the lessor has received (1) either a true executed copy of such assignment or written notice thereof, (2) a reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration or Veterans Administration or the Federal National Mortgage Association or

a foreclosure of mortgage or assignment in lieu of foreclosure, and (3) the written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from liability under the lease unless the lessor consents in writing to the assignment. A consent to the assignment shall be deemed a consent to the release of the assignor from liability under the lease. The lessor shall not require payment of any money for the lessor's consent except the service charge, nor withhold such consent unreasonably. Any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of the lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the lessee by the lease only during the period such person has possession or ownership of the leasehold estate. HAW. REV. STAT. § 516-63.

(a) Unless otherwise agreed to in a written rental agreement and except as otherwise provided in this section, the tenant may sublet the tenant's dwelling unit or assign the rental agreement to another without the landlord's consent.
(b) Subsection (a) does not apply to a tenant of a dwelling unit administered, owned, or subsidized by the United States, the State, a county, or any agency thereof.
(c) A written rental agreement may provide that the tenant's right to sublet the tenant's dwelling unit or assign the rental agreement is subject to the consent of the landlord. HAW. REV. STAT. § 521-37.

- ***Idaho*.** Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. IDAHO CODE § 55-302.

- ***Indiana*.** A sublessee has the same remedy under the original lease against the chief landlord as the sublessee would have had against the immediate lessor. IND. CODE § 32-31-1-12.

  An alienee of a lessor or lessee of land has the same legal remedies in relation to the land as the lessor or lessee. IND. CODE § 32-31-1-13.

- ***Kansas*.** No tenant for a term not exceeding two years, or at will, or by sufferance, shall assign or transfer his or her term or interest or any part thereof to another without the written consent of the landlord or person holding under the landlord. KAN. STAT. § 58-2511.

  If any tenant shall violate the provisions of the preceding section, the landlord or person holding under the landlord, after giving ten days' notice to quit possession, shall have a right to re-enter the premises and take possession thereof and dispossess the tenant, subtenant or undertenant. KAN. STAT. § 58-2512.

  Sublessees shall have the same remedy upon the original covenant against the principal landlord as they might have had against their immediate lessor. KAN. STAT. § 58-2515.

Alienees of lessors and lessees of land shall have the same legal remedies in relation to such land as their principal. KAN. STAT. § 58-2516.

- ***Kentucky*.** If the owner or holder alienates or assigns his estate, term or the rent thereafter to fall due thereon, the alienee or assignee may recover the rent that falls due thereafter. KY. REV. STAT. § 383.010(2).

  Unless the landlord consents thereto in writing, every assignment, or transfer of his term or interests in the premises, or any portion thereof, by a tenant at will or by sufferance, or one who has a term less than two (2) years, shall operate as a forfeiture to the landlord. The landlord, after having given the occupant ten (10) days' written notice to quit, may reenter and take possession, or may, by writ of forcible entry or detainer, or the proper procedure, recover possession of the premises from any occupant. KY. REV. STAT. § 383.180(2).

- ***Maryland*.** (a) If a lease for more than three months is assigned, the assignee is liable to distress for any goods on the leased premises as though originally named in the lease as tenant.
  (b) Any goods of the assignee on the leased premises shall be subject to the landlord's distress claim to the same extent as though the assignee was originally a tenant. This liability of goods exists regardless of whether the assignment was oral or written and regardless of the terms set out in the assignment. The obligation of the assignee of the lease for personal liability shall be restricted to the terms and agreements contained in the assignment of lease. The exercise of any right of the landlord against the assignee provided in this section does not bar any rights the landlord may have against the assignor. MD. CODE REAL PROP. § 8-329.

- ***Missouri*.** No tenant for a term not exceeding two years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another without the written assent of the landlord; neither shall he violate any of the conditions of his written lease, nor commit waste upon the leased premises. MO. STAT. § 441.030.

- ***Montana*.** A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing. MONT. CODE § 70-24-305.

  Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of any agreement in the lease or for recovery of the possession, the lessor has against the assignees of the lessee for any cause of action accruing while they are assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises. MONT. CODE § 70-26-105.

  Whatever remedies the lessee of any real property may have against the lessee's immediate lessor for the breach of any agreement in the lease, the lessee may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and the lessor's assigns, except upon covenants against encumbrances or relating to the title or possession of the premises. MONT. CODE § 70-26-106.

- ***New Jersey*.** From and after November tenth, one thousand seven hundred and ninety-seven, all persons and bodies politic and corporate, being grantees or assignees of any real estate, let to lease, or of the reversions thereof from any person, and the heirs, executors, administrators, successors and assigns of such grantees or assignees, shall have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for nonpayment of rent, or for waste, or other forfeitures; and also shall have and enjoy all the covenants, conditions and agreements contained in their leases, demises or grants, against the lessees, their executors, administrators and assigns, as the lessors themselves, or their heirs, ought or might have had or enjoyed at any time. N.J. STAT. § 46:8-2.

- ***New York*.** The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty. N.Y. REAL PROP. LAW § 223.

  The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered. N.Y. REAL PROP. LAW § 226.

  1. Unless a greater right to assign is conferred by the lease, a tenant renting a residence may not assign his lease without the written consent of the owner, which consent may be unconditionally withheld without cause provided that the owner shall release the tenant from the lease upon request of the tenant upon thirty days notice if the owner unreasonably withholds consent which release shall be the sole remedy of the tenant. If the owner reasonably withholds consent, there shall be no assignment and the tenant shall not be released from the lease.
  2. (a) A tenant renting a residence pursuant to an existing lease in a dwelling having four or more residential units shall have the right to sublease his premises subject to the written consent of the landlord in advance of the subletting. Such consent shall not be unreasonably withheld.
  (b) The tenant shall inform the landlord of his intent to sublease by mailing a notice of such intent by certified mail, return receipt requested. Such request shall be accompanied by the following information: (i) the term of the sublease, (ii) the name of the proposed sublessee,

(iii) the business and permanent home address of the proposed sublessee, (iv) the tenant's reason for subletting, (v) the tenant's address for the term of the sublease, (vi) the written consent of any cotenant or guarantor of the lease, and (vii) a copy of the proposed sublease, to which a copy of the tenant's lease shall be attached if available, acknowledged by the tenant and proposed subtenant as being a true copy of such sublease.
(c) Within ten days after the mailing of such request, the landlord may ask the tenant for additional information as will enable the landlord to determine if rejection of such request shall be unreasonable. Any such request for additional information shall not be unduly burdensome. Within thirty days after the mailing of the request for consent, or of the additional information reasonably asked for by the landlord, whichever is later, the landlord shall send a notice to the tenant of his consent or, if he does not consent, his reasons therefor. Landlord's failure to send such a notice shall be deemed to be a consent to the proposed subletting. If the landlord consents, the premises may be sublet in accordance with the request, but the tenant thereunder, shall nevertheless remain liable for the performance of tenant's obligations under said lease. If the landlord reasonably withholds consent, there shall be no subletting and the tenant shall not be released from the lease. If the landlord unreasonably withholds consent, the tenant may sublet in accordance with the request and may recover the costs of the proceeding and attorneys fees if it is found that the owner acted in bad faith by withholding consent.
3. The provisions of this section shall apply to leases entered into or renewed before or after the effective date of this section, however they shall not apply to public housing and other units for which there are constitutional or statutory criteria covering admission thereto nor to a proprietary lease, viz.: a lease to, or held by, a tenant entitled thereto by reason of ownership of stock in a corporate owner of premises which operates the same on a cooperative basis.
4. With respect to units covered by the emergency tenant protection act of nineteen seventy-four or the rent stabilization law of nineteen hundred sixty-nine the exercise of the rights granted by this section shall be subject to the applicable provisions of such laws. Nothing contained in this section two hundred twenty-six-b shall be deemed to affect the rights, if any, of any tenant subject to title Y of chapter 51 of the administrative code of the city of New York or the emergency housing rent control law.
5. Any sublet or assignment which does not comply with the provisions of this section shall constitute a substantial breach of lease or tenancy.
6. Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.
7. The provisions of this section except for items in paragraph (b) of subdivision two of this section not previously required, shall apply to all actions and proceedings pending on the effective date of this section.
8. Nothing contained in this section shall be deemed to prevent or limit the right of a tenant to sell improvements to a unit pursuant to article seven-C of the multiple dwelling law. N.Y. REAL PROP. LAW § 226(b).

Notwithstanding any contrary provision contained in any lease hereafter made which affects premises demised for residential use, or partly for residential and partly for professional use, the executor, administrator or legal representative of a deceased tenant under such a lease, may request the landlord thereunder to consent to the assignment of such a lease, or to the

subletting of the premises demised thereby. Such request shall be accompanied by the written consent thereto of any co-tenant or guarantor of such lease and a statement of the name, business and home addresses of the proposed assignee or sublessee. Within ten days after the mailing of such request, the landlord may ask the sender thereof for additional information as will enable the landlord to determine if rejection of such request shall be unreasonable. Within thirty days after the mailing of the request for consent, or of the additional information reasonably asked for by the landlord, whichever is later, the landlord shall send a notice to the sender thereof of his election to terminate said lease or to grant or refuse his consent. Landlord's failure to send such a notice shall be deemed to be a consent to the proposed assignment or subletting. If the landlord consents, said lease may be assigned in accordance with the request provided a written agreement by the assignee assuming the performance of the tenant's obligations under the lease is delivered to the landlord in form reasonably satisfactory to the landlord, or the premises may be sublet in accordance with the request, as the case may be, but the estate of the deceased tenant, and any other tenant thereunder, shall nevertheless remain liable for the performance of tenant's obligations under said lease. If the landlord terminates said lease or unreasonably refuses his consent, said lease shall be deemed terminated, and the estate of the deceased tenant and any other tenant thereunder shall be discharged from further liability thereunder as of the last day of the calendar month during which the landlord was required hereunder to exercise his option. If the landlord reasonably refuses his consent, said lease shall continue in full force and effect, subject to the right to make further requests for consent hereunder. Any request, notice or communication required or authorized to be given hereunder shall be sent by registered or certified mail, return receipt requested. This act shall not apply to a proprietary lease, viz.: a lease to, or held by, a tenant entitled thereto by reason of ownership of stock in a corporate owner of premises which operates the same on a cooperative basis. Any waiver of any part of this section shall be void as against public policy. N.Y. REAL PROP. LAW § 236.

- ***North Dakota.*** Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of an agreement in the lease or for recovery of the possession, the lessor also has against the assignees of the lessee for any claim for relief accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises. N.D. CENT. CODE § 47-16-30.

- ***Oklahoma.*** No tenant for a term not exceeding two (2) years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another, without the written assent of the landlord or person holding under him. OKLA. STAT. tit. 41, § 10.

  If any tenant shall violate the provisions of the preceding section, the landlord, or person holding under him, after giving ten (10) days' notice to quit possession, shall have a right to reenter the premises and take possession thereof, and dispossess the tenant, subtenant or undertenant. OKLA. STAT. tit. 41, § 11.

  Sublessees shall have the same remedy upon the original covenant against the principal landlord as they might have had against their immediate lessor. OKLA. STAT. tit. 41, § 15.

Alienees of lessors and lessees of land shall have the same legal remedies in relation to such lands as their principal. OKLA. STAT. tit. 41, § 16.

- ***Pennsylvania.*** Any person who is a sublessee shall be subject to the provisions of the lease between the lessor and the lessee. PA. STAT. tit. 68, § 250.105.

  No lease of any real property made or created for a term of more than three years shall be assigned, granted or surrendered except in writing signed by the party assigning, granting or surrendering the same or his agent, unless such assigning, granting or surrendering shall result from operation of law. PA. STAT. tit. 68, § 250.203.

- ***South Carolina.*** A sublease by a tenant without written consent of the landlord is a nullity insofar as the rights of the landlord are concerned, except that rent collected by a tenant from a subtenant shall be deemed to be held in trust by the tenant for the benefit of the landlord until the payment of the landlord's claim for rent. But when the premises have been sublet the sublessor, as between himself and the subtenant or sublessee, shall be deemed the landlord and the sublessee the tenant under him and the provisions of Chapters 33 through 37, § 27-39-10 and Article 3 of Chapter 39 of this Title, other than §§ 27-35-80, 27-35-170 and 27-35-180, 27-39-280 and 27-39-300 shall apply to sublessors and sublessees, as between themselves, as in other cases of landlord and tenant. S.C. CODE § 27-35-60.

- ***South Dakota.*** Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises. S.D. CODIFIED LAWS § 43-32-20.

  Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises. S.D. CODIFIED LAWS § 43-32-21.

- ***Texas.*** During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord. TEX. PROP. CODE § 91.005.

- ***Virginia.*** If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of his approval. VA. STAT. § 55-248.7(E).

- ***West Virginia.*** A lessee, his personal representatives, devisees or assigns, may have against an heir, devisee, grantee or alienee of the reversion, or of any part thereof, or of any estate therein, his heirs, devisees, or assigns, the like benefit of any condition, covenant, or promise

in the lease, as he could have had against the lessors themselves; except the benefit of any warranty, in deed or law. W. VA. CODE § 37-6-2.

Rent may be recovered from the lessee, or other person owing it, or the heir, personal representative, devisee or assignee, who has succeeded to the lessee's estate in the premises. But no assignee shall be liable for rent which became due before his or her interest began. W. VA. CODE § 37-6-11(a).

- ***Wisconsin.*** An assignment by the tenant of a leasehold interest which has an unexpired period of more than one year is not enforceable against the assignor unless the assignment is in writing reasonably identifying the lease and signed by the assignor; and any agreement to assume the obligations of the original lease which has an unexpired period of more than one year is not enforceable unless in writing signed by the assignee. Wis. Stat. § 704.03(3).

  (1) A tenant under a tenancy at will or any periodic tenancy less than year-to-year may not assign or sublease except with the agreement or consent of the landlord. The interest of any other tenant or the interest of any landlord may be transferred except as the lease expressly restricts power to transfer. A lease restriction on transfer is construed to apply only to voluntary transfer unless there is an express restriction on transfer by operation of law.
  (2) In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of any contractual obligations under the lease, except in the special situation governed by s. 704.25(5).
  (3) All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach which occurs during the period when the successor holds his or her interest, unless the successor has by contract assumed greater liability; a personal representative may also recover damages for a breach for which the personal representative's decedent could have recovered.
  (4) The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.
  (5) If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers. Wis. Stat. § 704.09.

  If an assignee or subtenant holds over after the expiration of the lease, the landlord may either elect to:

  (a) Hold the assignee or subtenant or, if he or she participated in the holding over, the original tenant as a periodic tenant under sub. (2); or
  (b) Remove any person in possession and recover damages from the assignee or subtenant or, if the landlord has not been accepting rent directly from the assignee or subtenant, from the original tenant. Wis. Stat. § 704.25(5).